

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BP West Coast Products LLC,

Plaintiff,

Case No.: 12-cv-00665-JLS-JLB

VS.

Crossroad Petroleum, Inc. et al.,

Defendants.

Order Denying Without Prejudice Plaintiff's Motion for Attorneys' Fees and Costs

[ECF No. 429]

Before the Court is Plaintiff and Counter-Defendant BP West Coast Products

LLC's ("BPWCP") Motion for Attorneys' Fees and Costs Associated with Motions to

Compel Discovery Against Schiller Defendants¹ (ECF No. 429), pursuant to Rule 37 of

the Federal Rules of Civil Procedure and the Court's Order dated June 2, 2015 (ECF No.

the Federal Rules of Civil Procedure and the Court's Order dated June 2, 2015 (ECF No.

421).

Civil Local Rule 7.1.e.2. requires a party opposing a motion to file an opposition

or statement of non-opposition within the fourteen calendar days prior to the noticed

¹ See ECF Nos. 414 and 422 (identifying the Schiller Defendants).

1 hearing. Failure to comply with these rules “may constitute a consent to the granting of a
2 motion.” CivLR 7.1.f.3.c. District courts have broad discretion to enact and apply local
3 rules, including issuing sanctions for failure to comply with the local rules. *Ghazali v.*
4 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (affirming grant of an unopposed motion to
5 dismiss under local rule by deeming a pro se litigant’s failure to oppose as consent to
6 granting the motion); *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979) (“Only
7 in rare cases will we question the exercise of discretion in connection with the application
8 of local rules”).

9 Here, the scheduled hearing date reflected on Plaintiff BPWCP’s noticed motion
10 was July 16, 2015, resulting in a response deadline for the Schiller Defendants of July 2,
11 2015. More than one month has passed since the scheduled hearing date and still the
12 Schiller Defendants have not filed an opposition. Applying the local rules of this court
13 and considering the public’s interest in expeditious resolution of litigation, the court’s
14 need to manage its docket, and the merits of BPWCP’s Motion for Attorney’s Fees and
15 Costs, the Court concludes that BPWCP should be awarded reasonable fees and costs.

16 However, BPWCP is seeking \$38,840.55 in fees, and the Court is unable to
17 calculate the amount of reasonable costs and fees owed to BPWCP based on the current
18 record. First, BPWCP fails to articulate why each of the Schiller Defendants should be
19 jointly responsible for BPWCP’s fees and costs, or alternatively, how the fees and costs
20 sought should be apportioned between the various Schiller Defendants. Second, BPWCP

1 fails to meet its burden of producing sufficient evidence showing that the requested
 2 hourly rates are reasonable rates in the Southern District of California for work of similar
 3 complexity by attorneys with comparable skill and reputation. *See Chaudhry v. City of*
 4 *Los Angeles*, 751 F.3d 1096, 1110-11 (9th Cir. 2014) (“Fee applicants have the burden of
 5 producing evidence that their requested fees are ‘in line with those prevailing in the
 6 community for similar services by lawyers of reasonably comparable skill, experience
 7 and reputation.’”); *Blair v. CBE Group, Inc.*, No. 13cv134-MMA, 2014 WL 4658731, at
 8 *3-*5 (S.D. Cal. Sept. 17, 2014) (same).

9 The evidence presented in support of BPWCP’s fees is inadequate.² For example,
 10 BPWCP provides an itemized list detailing the fees and costs incurred by named
 11 “professional[s],” but fails to provide job titles and other information relevant to these
 12 professionals’ skill, experience, and reputation. Further, BPWCP provides its own
 13 counsel’s declaration attesting to the reasonableness of the fees sought, but fails to
 14 provide other corroborating evidence. *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984)
 15 (“the burden is on the fee applicant to produce satisfactory evidence—***in addition to the***
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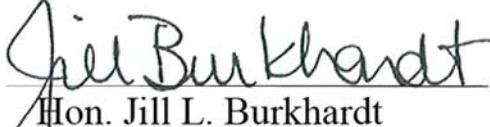
17 ² The Court notes that this is BPWCP’s second opportunity to meet this burden. The Court previously
 18 directed BPWCP to re-brief and provide sufficient evidence in support of its motion seeking sanctions.
 19 (ECF No. 421 at 3, ¶7 (“Any such motion [for costs and attorneys’ fees] must be supported with
 20 sufficient evidence to meet Plaintiff’s burden and to enable the Court to consider all the factors
 necessary in setting reasonable fees under both Fed. R. Civ. P. 37 and pertinent case law.”)); *see also*
See In re Washington Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1306 (9th Cir. 1994) (“the
 district court was neither obligated to explain what type of records should be submitted, nor to request
 additional information”).

1 *attorney's own affidavits*—that the requested rates are in line with those prevailing in the
2 community for similar services by lawyers of reasonably comparable skill, experience
3 and reputation") (emphasis added); *Chaudhry*, 751 F.3d at 1110-11 ("Affidavits of the
4 plaintiffs' attorney[s] **and other attorneys** regarding prevailing fees in the community . . .
5 are satisfactory evidence of the prevailing market rate.") (internal citations omitted)
6 (emphasis added).

7 Therefore, BPWCP's Motion is DENIED WITHOUT PREJUDICE (ECF No. 429)
8 as BPWCP failed to meet its burden to produce sufficient evidence for the Court to award
9 reasonable fees and costs under Fed. R. Civ. P. 37.³

10 IT IS SO ORDERED.

11 Dated: August 27, 2015


12 Hon. Jill L. Burkhardt
13 United States Magistrate Judge

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20 ³ Because this order is without prejudice, it does not preclude BPWCP from seeking an award of its reasonable costs and attorneys' fees from the District Court as part of its motions for sanctions currently pending before the Honorable Janis L. Sammartino. (See ECF Nos. 446-48.)